

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
vs.)	CRIMINAL NO. 04-00054-WS
)	
MICHAEL JEROME LEE,)	
)	
Defendant.)	

ORDER

This matter is before the Court on the defendant's petition to modify sentence pursuant to 18 U.S.C. § 3582(c)(2). (Doc. 78). The motion is based on the action of the Bureau of Prisons in cancelling its boot camp program in January 2005, after the defendant was sentenced but before he surrendered. According to the defendant, "[b]y terminating the boot camp program, BOP amended USSG guideline 5F1.7 (shock incarceration)." (*Id.* at 2).

Section 3582(c)(2) provides for the modification of a previously imposed sentence "of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission" 18 U.S.C. § 3582(c)(2). "[Section] 3582(c)(2) authorizes only modification of a sentence as a result of an amendment to the guidelines made retroactive by the Sentencing Commission" *United States v. Joseph*, 130 Fed. Appx. 357, 360 (11th Cir. 2005). The action of the Bureau of Prisons is not the action of the Sentencing Commission, nor did it serve to lower any sentencing range. Accordingly, modification under Section 3582(c)(2) is legally unavailable.

For the reasons set forth above, the defendant's petition to modify sentence is **denied**.

DONE and ORDERED this 15th day of September, 2005.

s/ WILLIAM H. STEELE
UNITED STATES DISTRICT JUDGE